IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE TWELFTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.7291 of 1996

Between:

M.Sattaiah, S/o.Rangaiah,
R/o. Revenue Quartes, Venkatapuram-507 136,
Khammam District

..... PETITIONER

AND

1 Girijan Cooperative Corporation Ltd.,

rep. by it's Vice-Chairman and Managing Director,
Visakhapatnam, Visakhapatnam District.
2 Vice-Chairman & Managing Director, Girijan Cooperative

Corporation Limited, Visakhapatnam, Visakhapatnam District.
3 Regional Manager, Girijan Cooperative Corporation Ltd.,
Hyderabad.
4 Divisional Manager, Girijan Cooperative Corporation Ltd.,
Bhadrachalam, Khammam Dist.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a Writ, order or direction especially one in the nature of Writ of certiorari calling for the records of the proceedings writ of certiorari calling, for the records of the proceedings of the 3rd respondent in Rc.No.A3/7/93.dt.16.9.1995 and further order passed in Rc.No.518/93/AII/B, dt.23.11.95 and in Rc.No.518/93/A.II.B, dt.7.2.1996 and quash the same by declaring that they are illegal and arbitrary and violative of Art.14&16 of Constitution of India.

Counsel for the Petitioner: Mr. M.SURENDER RAO

Counsel for the Respondents: Mr. N.SRIDHAR REDDY

The Court made the following :

JUDGMENT:

This writ petition is filed seeking a Certiorari calling for the records in Proceedings Rc.No.A3/7/93, dated 16-9-1995 of the 3rd respondent, Rc.No.518/93/A.II.B, dated 23-11-1995 of the 2nd respondent and Rc.No.518/93/A.II.D, dated 7-2-1996 on the file of the 2nd respondent and quash the same as arbitrary and illegal.

According to the petitioner, he joined the service of the respondent-Girijan Cooperative Corporation Limited as a Salesman in the year 1971. Subsequently, in the year 1972 he was appointed as Lower Division Clerk and promoted to the post of Upper Division Clerk in the year 1985. He was kept incharge of godown at Venkatapuram. Girijan Cooperative Corporation Limited was entrusted with the stocks of Public Distribution System (PDS) i.e. stocks of the Civil Supplies Corporation or the Civil Supplies Department. During his tenure at Venkatapuram, he received more than 38,000 tons of rice, out of it 32,000 tons was meant for PDS and 6,000 for flood victims. He had also received sugar of 400 quintals. He further stated that Girijan Cooperative Corporation Limited does not have godowns with necessary specifications and facilities. Therefore, there was a chance of wastage of the stocks stored therein. 6,000 tons of rice and some sugar were supplied to the victims of flood. This stock of 6,000 tons of rice could not be stocked in the godown of Girijan Cooperative Corporation Limited. It had to be stored at various points for easy supply to the flood victims without any delay. The stocks were stored at various places only to avoid inconvenience. The Government itself instructed storage of the stocks at various points. At the points where the stocks were stored, there were not even minimum facilities. The stocks got wetted and damaged. The petitioner went to the Manager of the Godown, the Divisional Manager and other higher officials to inform the position of the stocks and their getting damaged due to floods. The higher officers have not given any instructions and no action was taken even after repeated requests. The petitioner estimated the damage caused to the stocks and prepared report along with a panchanama and sent to the higher officials. They refused to receive the same. While the matter stood thus, the Civil Supplies Department officials visited the godown on 21-11-1992 and found that there was a shortage in the goods to an extent of 135.51 quintals of rice and around 3.62 quintals of sugar.

He explained the reasons as to why there was a shortage. They have noted the shortage and directed him to deposit the value of the shortage stocks. Immediately within one month, he deposited Rs.28,000/- on 31-12-1992. The Civil Supplies Department demanded from the Girijan Cooperative Corporation Limited the value of the deficit stocks. Thereupon, the Manager of Girijan Cooperative Corporation Limited, Venkatapuram gave a reply by letter dated 7-1-1993 to the letter of the Joint Collector dated 31-12-1992 explaining as to the shortage noticed that comes to 0.038% of the total stocks supplied to the Corporation. It was also informed to the Joint Collector, who was also the Ex-Officio Executive Director of the Civil Supplies Corporation that the shortages were within the permissible limits. There will be loss in the weight because of the draiage and also in loading and unloading and there can be shortage for any other reason. He cannot be held responsible for the shortage of stocks, which was within the permissible limits. While so, he was kept under suspension by an order dated 13-1-1993 for the alleged shortages in stocks. Further, he was given a charge memo dated 1-11-1994 for the shortages noticed on 21-11-1993. He gave explanation for the same on 21-11-1992. Having not satisfied with the explanation submitted by him, an Enquiry Officer was appointed, who conducted enquiry and submitted his report. Thereafter, on 16-4-1995 a show cause notice was issued asking him to explain as to why disciplinary action should not be taken, to which he submitted his explanation on 16-4-1995. By Proceedings dated 16-9-1995 of the 3rd respondent final orders were passed dismissing him from service. Aggrieved by the same, he filed an appeal and the same was also rejected on 23-11-1995. The second appeal made to the Board was also rejected on 7-2-1996 on the ground that there was no provision for second appeal as per Service Rules of Girijan Cooperative Corporation. Challenging the said orders, the present writ petition is filed.

A detailed counter affidavit has been filed on behalf of the respondents denying the allegations made by the petitioner. It is *inter alia* asserted that at no point of time, the petitioner complained that the Enquiry Officer did not conduct any enquiry properly nor has examined any witnesses. After considering the explanation of the petitioner, Proceedings dated 16-9-1995 were issued dismissing the petitioner from service. Questioning the same, the petitioner has filed an appeal, which was rejected on 23-11-1995. Again he preferred further appeal before the Board of Directors, which was also rejected on 7-2-1996 on the ground that there is no provision for preferring a

second appeal in the service rules of the Corporation. Thereafter, the petitioner approached the Government and the Government vide its letter dated 15-11-1997 directed the respondents to place the subject matter before the Board for its consideration, on merits. Even before the matter could be placed before the Board, the petitioner approached this Court. However, the matter was placed before the Board on 11-8-1999, but no final decision is taken. The appeal is kept in abeyance, since the matter is pending before this Court. The Board was, however, reconstituted vide G.O.Ms.No.6, Social Welfare Department, dated 22-1-2005, which assumed charge on 27-1-2005 and if the Court permits, the matter would be taken up by the Board for its decision, on merits.

The contention of the petitioner is that absolutely there was no relevant and acceptable evidence before the management to hold the petitioner guilty of the charges. No witness was examined and no legal evidence was adduced, both oral and documentary to prove the charges. Assuming that the charges are proved, the punishment of dismissal from service is disproportionate to that of the misconduct alleged.

In view of the assertions made in the counter affidavit, it may not be necessary for this Court to go into all the details as to appreciate the contentions of the learned counsel for the petitioner that this is a case of no evidence and even if the charges are proved, the punishment is disproportionate etc. Respondent-management filed a detailed counter affidavit and asserted that the appeal is pending on the file of the Board and the same is kept in abeyance and orders would be passed for placing the matter once again before the Board, if they are permitted to do so.

Having regard to the facts and circumstances of the case, I am of the considered opinion that since the appeal filed by the petitioner is pending before the Board, it is always better for the Board to take a decision in the matter, on merits, instead of deciding the matter by this Court within the narrow jurisdiction of judicial review under Article 226 of the Constitution of India.

Accordingly, the Writ Petition is disposed of permitting the respondents to place the matter before the Board of Directors of the respondent-Corporation for a detailed consideration of the second appeal, which is pending before it, within a period of one month from the date of receipt of a copy of this order and communicate the decision of the Board to the petitioner immediately thereafter. No order as to costs.

12-4-2005

prk

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Vice-Chairman and Managing Director,

Girijan Cooperative Corporation Limited,
Visakhapatnam, Visakhapatnam District.
2 Regional Manager, Girijan Cooperative Corporation Ltd.,
Hyderabad.
3 Divisional Manager, Girijan Cooperative Corporation Ltd.,
Bhadrachalam, Khammam District

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